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No. 00-488

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

MUSIC SQUARE CHURCH,

Petitioner,

—v.—

UNITED STATES,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

PETITIONER'S REPLY TO BRIEF IN OPPOSITION

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PETITIONER'S REPLY TO BRIEF IN OPPOSITION

The government's brief in opposition is in fact a studied effort at evasion. The brief merely reiterates the reasoning and conclusions of the court of appeals, repeatedly qualifying both as "correct" but without any consideration of the principal objections to those conclusions and arguments raised in the Church's petition.

- The government makes no attempt to explain why Congress would have engaged in a futile legislative act by intentionally imposing an unenforceable or illusory two-year limitation period within which the Internal Revenue Service "shall" complete a church tax status examination.

- The government makes no attempt to explain why the authors of the statute would have carefully inserted *tolling* provisions for a limitation period that is itself unenforceable. (See § 7611(c)(2)(B) and (C); Pet. 9, 13.)

- The government fails even to mention the fact that the IRS previously acknowledged that if it failed to complete a church tax status examination within the limitation period, it had to close the examination without revoking the church's tax-exempt status. Congress is presumed to have been aware of the agency's interpretation when it reenacted the statute without any pertinent change in 1996 and 1998. (See *Founding Church of Scientology of Washington, D.C.* v. *United States*, 26 Cl. Ct. 244, 245 (1992); Pet. 9-10, 24.)

- The government ignores *all* of the passages from the legislative history that support the Church's position, including the statements that CAPA's provisions

"*emphasize* the need for a speedy determination of church tax liabilities" and that the purpose of the limitation period was to "avoid unconstitutional entanglement" between church and state (emphasis added; see Pet. 26, 29). Instead, the government, like the court of appeals, focuses on a single passage from the legislative history whose import is inconclusive. (Br. 7.) Nothing in that passage necessitates the conclusion that the authors of the statute had the limitation period in mind when they spoke of "procedures" and "requirements" for which the exclusive remedy was the stay of summons imposed by § 7611(e)(1). When read in conjunction with other statements in the legislative history – to which no reference is made either in the government's brief or in the opinion of the court of appeals – the passage refers only to the provisions that the statute specifically identifies as "requirements," and *not* to the portions of the statute identified as "limitations" and "restrictions."

- The government fails to explain how its view that the two-year limitation period is unenforceable can be reconciled with the express statement in § 7611(e)(1) that the limitation period will continue to run during any stay of proceedings imposed as a remedy for a violation of the requirements listed in that subsection.

The government attempts to confront only two of the Church's claims directly, but in the first instance its argument is largely self-contradictory, and in the second instance it both misrepresents the Church's view and also ends up contradicting itself:

(1) The government denies that the court of appeals' decision

conflicts with the decision of the First Circuit in *United States* v. *Church of Scientology of Boston, Inc.*, 933 F.2d 1074 (1991) (Breyer, J.) and with that of the Ninth Circuit in *United States* v. *Church of Scientology Western United States*, 973 F.2d 715 (1992), yet in almost the same breath asserts that the court of appeals properly concluded that the "remedy provided in Section 7611(e)(1) is the exclusive remedy for any violation of *any provision* of Section 7611." (Br. 7) (emphasis added). As indicated at length, however, in the Church's petition (18-19), the two *Church of Scientology* decisions imposed remedies – ones not contemplated by § 7611(e)(1) – for failures to comply with § 7611(b)(1), the provision of the statute that imposes the heightened necessity standard. The government does not attempt to argue that § 7611(b)(1) is not a "provision" of the statute. Therefore, the government's stance is self-contradictory, for either § 7611(e)(1) provides the exclusive remedy for "any violation of any provision of Section 7611," in which case both of the *Scientology* decisions were wrongly decided, or else those decisions were properly decided, in which case § 7611(e)(1) does *not* provide the exclusive remedy for all of the statute's provisions.

The government tries to escape from this consequence by repeating the court of appeals' statement that a "violation of a procedural requirement of section 7611 was not asserted as a defense, nor as a basis for a declaratory judgment," in either of the two earlier cases. (Br. 8.) As indicated in the Church's petition (21-23), in both of the earlier cases it is precisely a violation of one of the statute's procedures that was asserted as a defense, and therefore the court of appeals' statement is either

inaccurate on its face, or is based on a distinction between "procedural" and "substantive" provisions which is nowhere supported by the language or structure of the statute and for which the court of appeals failed to provide any explanation whatsoever – let alone any explanation for why the two-year time limitation should be considered as "procedural" rather than "substantive." The government, of course, does not address any of the Church's arguments concerning this issue, but merely contents itself with repeating the court of appeals' statement word for word as if its conclusive meaning were transparent.

(2) The government distorts the Church's position by stating that the Church "errs in contending that the only consequence of Section 7611(e)(2) is to make the remedy provided in subsection (e)(1) the exclusive remedy for violations of the specific requirements listed in that subsection." (Br. 6.) The Church does not make that contention; indeed, the petition for certiorari specifically states that § 7611(e)(2) "also establishes that there is no judicial remedy for the 'reasonable belief requirement' set forth in § 7611(a)(2)." (Pet. 12.) What the Church *does* contend is that the plain meaning of the term "requirements" used in § 7611(e)(2) must be understood in relation to the term's use in the provisions specifically identified as "requirements" – as opposed to "restrictions" and "limitations" – elsewhere in the statute. "A term appearing at several places in a statutory text is generally read in the same way each time it appears." *Ratzlaf* v. *United States*, 510 U.S. 135, 143 (1994). Further, since most of those provisions are in fact *listed* in § 7611(e)(1), the Church contends that the two

subparagraphs of § 7611(e) must be read together, and not as unrelated linguistic acts. The Church founded its discussion of these two related points on the principles of efficiency and internal consistency in statutory construction as formulated in the decisions of this Court and in other authorities, but the government's brief has not a word to say about the merits or demerits of a statutory construction that renders the statute unenforceable. Instead, the brief repeatedly, and laconically, puts forward the view that the plain language of the statute refutes the Church's position.

The government's frequent, but unsupported, repetition of this argument does not make it convincing. A good illustration of the government's understanding of the statute's plain language occurs where the brief asserts that § 7611(e)(1) "does not itself impose requirements." (Br. 6.) This is an odd assertion, for § 7611(e)(1) provides that if the IRS has failed to comply with the listed requirements, "any summons with respect to [the] inquiry or examination *shall be stayed* until the court finds that all practicable steps to correct the noncompliance have been taken." (Emphasis added.) Under the government's own interpretation of the term "requirements" in § 7611(e)(2) – to wit, that it refers to all of the statute's provisions – the quoted language ("shall be stayed") from § 7611(e)(1) must simply constitute another provision of the statute, and must therefore set forth another unenforceable "requirement," just like the two-year limitation provision of § 7611(c)(1) where the term "shall" also appears. The assertion that § 7611(e)(1) "does not itself impose requirements" illustrates the false logic that necessarily results from the

government's attempts to justify its particular interpretation of the statute's plain language. By attempting to make sense of the statute's language without following the semantic distinctions drawn by the structure and vocabulary of the text as a whole, the government presents a version of the statute that is essentially self-contradictory.[1/]

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted

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[1/] At any rate, the assertion that § 7611(e)(1) "does not itself impose requirements" also evades the issue, for with the single exception of the "reasonable belief requirement" of § 7611(a)(2) (see the Church's petition at 12), all of the provisions of the statute that specifically define themselves as "requirements" are listed in § 7611(e)(1). The distinction between "setting forth" and "listing" thus fails to bridge the logical gap between the statutory provisions that specifically set forth "requirements," and the other provisions of the statute that set forth "limitations" and "restrictions."